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# MULTIMEDIA UNIVERSITY

## FINAL EXAMINATION

TRIMESTER 1, 2018/2019

### UIP2612 – INTELLECTUAL PROPERTY LAW

(All Sections / Groups)

24 OCTOBER 2018

Reading Time: 2.30 p.m. – 2.45 p.m.

(15 Minutes)

Answering Time: 2.45 p.m. – 5.45 p.m.

(3 Hours)

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#### INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This question paper consists of 3 pages with 4 questions only.
3. Attempt **ALL** questions. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of the following statutes into the exam venue:
  - i) Copyright Act 1987
  - ii) Patents Act 1983
  - iii) Industrial Designs Act 1996
  - iv) Trade Marks Act 1976.

“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

**QUESTION 1**

- (a) Explain why according to Kenneth J. Arrow, information can be considered as a public goods. (6 marks)
- (b) Explain the economic justification for patent law. (14 marks)
- (c) Identify the similarities between the economic justification for intellectual property rights to Locke's theory of property. (5 marks)

(Total: 25 marks)

**QUESTION 2**

Answer either (A) or (B).

- (A) OpenStreetMap is a website which allows everyone in the world to collaborate in creating and improving street maps data from around the world. However, several characteristics of the OpenStreetMap make it difficult to identify the copyrightability and authorship of the maps created in OpenStreetMap:

- (i) The maps are continuously being updated by various contributors several times an hour,
- (ii) Each contributor's effort is negligible compared to the whole of the map database, and
- (iii) Contributors come from all countries in the world.

Critically discuss the issues that may arise concerning the authorship and ownership of the above under Malaysian copyright law.

(Total: 25 marks)

~~~~~ OR ~~~~~

- (B) There is a fundamental disagreement between paragraph (g) of the definition for 'literary works' and section 8(1)(b) of the Copyright Act 1987.

Discuss.

(Total: 25 marks)

**Continued...**

**QUESTION 3**

Insulate Sdn Bhd carried on a business in manufacturing insulated products such as tumblers, food jars etc. Avi was employed by Insulate Sdn Bhd as its design director. With the company's resources and equipment, Avi succeeded in producing a new stainless food jar which can keep food warm up to 5 hours and after the said 5 hours the jar will automatically reheat. Thus the food jar which works on battery could constantly keep food warm.

Consider the following situations arising in each of the following situations which are independent of each other.

- (a) Assume Insulate Sdn Bhd decided to manufacture the said food jars. Before the products were finally marketed, Avi left Insulate Sdn Bhd and set up his own company producing food jars based on the said idea. Advise Insulate Sdn Bhd whether it may institute any legal action against Avi in light of the fact that the employment contract between Avi and Insulate Sdn Bhd contained no provision as regards to the duty of confidence on Avi.

(15 Marks)

- (b) Assume Avi submitted his idea of the said food jars but Insulate Sdn Bhd did not manufacture the products as it was considered too costly and may not receive good response from the consumers. This was communicated to Avi. Avi then left Insulate Sdn Bhd and set up his own company. However, before Avi could produce the said food jars Insulate Sdn Bhd produced the said jars.

Advise Avi as to whether he has any remedies against Insulate Sdn Bhd.

(10 Marks)

(Total: 25 Marks)

Continued...

**QUESTION 4**

Answer either (A) or (B).

- (A) Kitchen Concept Bhd launched its new kitchen concept named “Apple Tree” which is mainly from stainless steel. The kitchen looks like a tree with two large fruits. The two fruits incorporate a small collection of products in the form of a small fridge and closets on one branch and a LCD screen, electric cooker and microwave oven. The sink, tap and table board are fitted on its top. The brand and the concept became well-known in Malaysia.

A competitor of Kitchen Concept Bhd, Life Bhd, introduced a kitchen concept called “Future” which is mainly made from granite. Instead of round shape as in “Apple Tree” the ends of the two branches of “Future” take the shape of a five-petal flower. It incorporates a fridge, closet, LCD screen, electric cooker and microwave oven too.

- (i) When sued by Kitchen Concept Bhd for trademark infringement, Life Bhd claimed that the trademark “Apple Tree” cannot be registered for reasons not revealed to Kitchen Concept Bhd.

Discuss with reference to relevant statutory provisions under Trade Marks Act 1976 and relevant case law whether there is any legal basis in the contention put forwarded by Life Bhd.

(20 marks)

- (ii) Assuming Life Bhd succeeds in the argument as mentioned in (i), advise Kitchen Concept Bhd as to any other remedy available.

(5 marks)

(Total: 25 Marks)

~~~ OR ~~~

- (B) Camy runs a restaurant in Petaling Jaya. The design and decoration of her restaurant takes the look and feel of Air Asia. In fact, the restaurant’s name is “Now Everyone Can Eat.” The waiter and waitress at Camy’s restaurant wear the uniforms identical to that of the stewards and stewardess working at Air Asia airplanes. Camy also sells goods which look similar to Air Asia souvenirs such as keychains, T-shirts, caps etc., at her restaurant.

Advise AirAsia on its rights, if any, against Camy under the law of passing off.

(Total: 25 Marks)

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